IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 18 of 2007
In
OFFICIAL LIQUDATOR REPORT No. 111 of 2006
In
COMPANY PETITION No. 212 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S. DHARTI BUILDCON PVT.LTD. - Applicant(s)
Versus
O.L. OF M/S. STAR OF GUJARAT TEXTILE MILLS LTD. & 5 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR JS YADAV for Respondent(s) : 1,
SINGHI & CO for Respondent(s) : 2,
MR SS PANESAR for Respondent(s) : 3,
M/S TRIVEDI & GUPTA for Respondent(s) : 4,
MR DS VASAVADA for Respondent(s) : 4,
GOVERNMENT PLEADER for Respondent(s) : 5,
NOTICE NOT RECD BACK for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/01/2007

ORAL JUDGMENT

1. Present Judge's Summons has been taken out by the applicant – M/s. Dharti Buildcon Private Limited for an appropriate order permitting the applicant to withdrawn an amount of Rs. 50 Lacs deposited by the applicant along with its offer by way of earnest money.

2. M/s. Star of Gujarat Textile Mills Limited was ordered to be wound up by order dated 14.6.1999. It is the case on behalf of the applicant that the Sale Committee gave a public advertisement and invited offers and the applicant submitted its offer for Rs.7.11 Crores by depositing Rs. 50 Lacs as EMD for submitting its offer with respect to the properties of the company in liquidation. It is submitted that OLR No.111 of 2006 has been filed by the Official Liquidator to confirm the sale in favour of the applicant being the highest offeror, however, in the said OLR one Shri R.K.Rathod, Deputy Collector, Ahmedabad has filed an affidavit stating that the subject matter of the land, which was put for auction, is already declared to be an excess

land under the U.L.C. Act and the same is vested in the State Government and the State Government has already taken over the possession of the same. As the title is not clear and there is dispute with regard to the ownership of the lands in question, the applicant does not wish to continue its offer and therefore, it is requested to allow the present application and permit the applicant to withdraw an amount of Rs.50 Lacs deposited by the applicant along with its offer by way of earnest money.

3. The Official Liquidator has submitted its report opposing the present Judge's Summons. Relying upon the terms and conditions of the tender notice and relying upon the decision of the Division Bench of this Court dated 24.8.2006 in OJ Appeal No. 47 of 2005, it is requested to dismiss the present application. It is submitted that once the offer is made by the applicant, as per Clause – 27 of the terms and conditions of the sale, it is not open for the applicant to withdraw from the offer and pray for to withdraw

the EMD. The learned counsel appearing for the Official Liquidator has submitted that as held by the Division Bench of this Court, it is not open for the applicant to withdraw from the offer and the natural consequences of withdrawal of the offer must follow.

4. Heard the learned advocates appearing for the applicant, Official Liquidator and the respective secured creditors.

5. After the order of winding up of M/s. Star of Gujarat Textile Mills Limited (in liquidation), a Sale Committee was constituted and offers were invited for sale of the properties of the company in liquidation inclusive of land bearing Survey Nos.43 and 44 situated at Dariapur-Kazipur admeasuring about 54,123 sq mts of land and pursuant to which, the applicant submitted its offer along with the EMD of Rs. 50 Lacs. The applicant is the highest offeror who has offered to purchase the properties in question for a sale consideration of Rs.7.11 Crores. The

Official Liquidator has submitted its report being OLR No. 111 of 2006 to consider the offer of the applicant and to confirm the sale. However, in the said OLR, the State Government has filed an affidavit and one Shri R.K.Rathod, Competent Authority and Deputy Collector, ULC, Ahmedabad has submitted in the affidavit that M/s. Girdharlal Harivallabh Mills Limited subsequently known as M/s. Star of Gujarat Textile Mills Limited filed a form under section 6(1) of the ULC Act on 10.8.1976 and the proceedings under the ULC Act were held upto section 10(5) and that out of 54,112.47 sq mts of land bearing Survey Nos.43 and 44, land admeasuring 25,421 sq mts has been declared as excess vacant land under the ULC Act and the possession of which has been taken over by the State Government and the land has been vested in the State Government free from all encumbrances. Thus, there is a dispute with regard to the ownership of 25,421 sq mts of land bearing Survey Nos.43 and 44, which is also part of the auction property. Out of 54,112.47 sq mts of

land, the dispute is with regard to 25,421 sq mts of land, which is for the substantial land. This Court is not expressing any opinion at present with regard to the legality and validity of the orders passed by the ULC authority and/or whether the State Government has become the absolute owner of the land in question or not as the same is the subject matter of OLR No.111 of 2006, however, the fact remains that at present there is a dispute with regard to the ownership of the land in question, which is a part of the auction property. It is also required to be noted that right from the beginning, the Official Liquidator was aware of the dispute by the State Government and/or it was brought to the notice of the Official Liquidator that there is some dispute with regard to the ownership of the land and still without getting any clearance and/or deciding the dispute, the Official Liquidator submitted report and proceeded further to sell the properties in question. Now, in view of the changed circumstances and the dispute raised by the State Government with

regard to part of the land, which is for substantial land and the dispute with regard to the ownership of the land, which is put to auction, the applicant is at present justified in withdrawing its offer and praying for withdrawal of the EMD of Rs. 50 Lacs. In the peculiar facts and circumstances of the case, Clause – 27 of the terms and conditions of the sale will not be applicable. It is not the case that the applicant is withdrawing its offer on the ground of delay in confirmation and/or that there is no reason whatsoever. Nobody can be compelled to purchase the land for which there is a dispute with regard to the title and ownership. One can appreciate that if the dispute was already there and it was brought to the notice of all the offerors that there is a dispute with regard to the ownership of the land which is put to auction, and still the respective offerors submitted their offers. A substantial dispute has been raised by the State Government after inviting the tenders and the offers from the respective offerors. Therefore,

reliance placed on the judgment of the Division Bench of this Court dated 24.8.2006 in aforesaid OJ Appeal No. 47 of 2005 will not be applicable to the facts of the present case. In the case before the Division Bench, the question was that the offeror wanted to withdraw from the offer on the ground that there was a delay in confirming the offer and there was no valid justification for withdrawing the offer. Clause – 27 of the terms and conditions of the sale cannot be construed in such a manner that it will cause injustice and hardship to the offeror. The terms and conditions are required to be interpreted reasonably.

6. As stated above, there are disputes with regard to the ownership and title of the part of the land which is put to auction and the dispute is with regard to substantial land i.e. out of 54,112.47 sq mts of land for 25,421 sq mts of land. Under the circumstances and in the facts and circumstances of the present case, when there is genuine dispute with regard to the

ownership of the land of substantial land, the applicant is justified in withdrawing from the offer at this stage and to pray for withdrawal of EMD of Rs.50 Lacs which is lying with the Official Liquidator since July – 2006 without fetching any interest.

7. Under the circumstances, the present application is allowed and the applicant is permitted to withdraw an amount of Rs. 50 Lacs deposited by the applicant with its offer by way of earnest money. The Official Liquidator is directed to refund the said amount of Rs.50 Lacs within a period of 2 (two) weeks from today. This application is accordingly disposed of, however, there shall be no order as to costs.

[M.R.Shah, J.]

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